
**RPLY**

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*Attorneys for Defendant, Cole Kepro International, LLC*

**IN THE EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

CASH CLOUD INC., a Nevada corporation,

Case No.: A-22-854226-B

Plaintiff,

Dep't No.: 22

vs.

**Defendant's Reply in Support of Motion  
 for Reconsideration of Court's October  
 10, 2022 Order Solely as it Concerns the  
 Contested Real Plaintiff Party in Interest**

COLE KEPRO INTERNATIONAL, LLC, a  
 Delaware limited liability company,

Defendant.

Hearing Date: November 29, 2022  
 Hearing Time: 8:30 a.m.

**I. The Opposition Concedes Both That No Quote Or Purchase Order Was Ever  
 Issued In The Name Of "Cash Cloud, Inc.," And That The Specific Purchase  
 Order Predicating This Action Was Issued In The Name Of "Customer – Coin  
 Cloud, LLC," Executed By Its Authorized Signatories**

The Court will note the absence of any dispute that never once during the parties' business relationship did Defendant Cole Kepro International, LLC ("Cole Kepro") issue a quote to a purchaser in the name of "Cash Cloud Inc.," and that never once was a purchase order issued by a purchaser in the name of "Cash Cloud Inc." *See* Rsp., *generally*. The opposition further concedes not only that the purchasing entity generated the specific purchase order underlying this action to

1 explicitly designate “Customer – Coin Cloud, LLC,” but also that the three signatories to the  
 2 purchase order – Christopher McAlary, Jeffrey Garon, and James Bauer – were at all relevant times  
 3 authorized signatories of that entity. *See* Rsp., generally; **Exhibit 1**, Purchase Order; **Exhibit 2**,  
 4 Corporate Filing Listing Garon and McAlary as Principals of Coin Cloud, LLC.

5 **II. Even The Touted February 26, 2021 Version Of The Subject Purchase Order**  
 6 **Was Issued In The Name Of “Coin Cloud” (i.e., “Not Cash Cloud Inc.”), Only**  
 7 **To Be Amended To Explicitly Clarify In The April 30, 2021 Operative Version**  
 8 **That The Purchaser Was Indeed Coin Cloud, LLC**

9 The opposition touts that a precursor version of the subject purchase order was issued to  
 10 Cole Kepro on February 26, 2021. **Exhibit 3**, Precursor Version of Purchase Order. But again,  
 11 independent of the fact that this is not the operative version of the purchase order in any event, it  
 12 *does not* designate “Cash Cloud Inc.” as the purchaser. *See Id.* Rather, the opposition insists that  
 13 Cole Kepro should have intuited that Cash Cloud Inc. was the contracting party notwithstanding the  
 14 purchase order having been issued on February 26, 2021 bearing the name “Coin Cloud,” and  
 15 having been amended on April 30, 2021 to explicitly designate “Customer – Coin Cloud, LLC.”  
 16 Ex. 2.

17 **III. The Premise Of The Opposition’s Response, i.e., Counsel’s Conclusory**  
 18 **Assertion That “Coin Cloud LLC Had No Interaction With Defendant Ever**  
 19 **Before,” Is Wildly Deceptive Where The Affiliate Entities Cash Cloud, Inc. And**  
 20 **Coin Cloud, LLC Had The Same Representative Agents At All Relevant Times**

21 The thrust of the response brief comprises counsel’s conclusory *ipse dixit* that the subject  
 22 purchase order’s designation of “Coin Cloud, LLC” as the customer was “obviously an error [] that  
 23 Defendant must have known [] because [] Coin Cloud LLC had no interaction with Defendant ever  
 24 before[.]” Rsp. p. 5. But this reflects a logical fallacy since the individuals with whom Cole Kepro  
 25 interacted were ostensibly and actually representative agents of *both* affiliate entities Cash Cloud  
 26 Inc. and Coin Cloud LLC at all relevant times.

27 Indeed, the corporate filings for Cash Cloud Inc. and Coin Cloud LLC list Mr. Garon and  
 28 Mr. McAlary as the co-principals of *both* entities. Ex. 2; **Exhibit 4**, Corporate Filing Listing Garon  
 and McAlary as Principals of Cash Cloud Inc. The opposition does not and has not ever contended  
 that Mr. Garon, Mr. McAlary, Mr. Bauer, or anyone else ever held themselves out to Cole Kepro as



1 agents or employees of Cash Cloud Inc. as opposed to Coin Cloud LLC. *See* Rsp., *generally*. In the  
2 face of the subject purchase order designating “Customer – Coin Cloud, LLC,” the opposition does  
3 not profess, for example, that Mr. Garon, Mr. McAlary, Mr. Bauer, or anyone else ever indicated  
4 verbally or in writing to Cole Kepro something along the lines of, “You know you’re dealing with  
5 Cash Cloud Inc. and not Coin Cloud, LLC, right?”

6 Instead, the response parrots the conclusory assertions of Mr. Garon’s declaration that  
7 despite the supposedly “mistaken” designation of Coin Cloud LLC as the purchaser, “Coin Cloud  
8 LLC did not purchase the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro,” and “Coin Cloud LLC did  
9 not take delivery of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro.” **Exhibit 5**, Garon Dec., ¶  
10 15. But Mr. Garon does not suggest, for example, that any employee having taken delivery of the  
11 kiosks from Cole Kepro wore a uniform or nametag bearing the name “Cash Cloud Inc.,” or that  
12 any kiosks were hauled away in a truck bearing the name “Cash Cloud Inc.” The point, in the face  
13 of a purchase order designating the customer as Coin Cloud LLC, is that such after-the-fact  
14 insistence by Mr. Garon is unavailing where there never existed any differentiation between the  
15 common employees and agents of Cash Cloud Inc. and Coin Cloud LLC.

16 For the avoidance of doubt, the opposition certainly does not profess to have ever advised  
17 Cole Kepro that the name “Coin Cloud” appearing at the top of every purchase order was a  
18 “federally registered trademark” supposedly intended to designate Cash Cloud, Inc., or any other  
19 specific entity. *See* Rsp., p. 2. Rather, and again, Cole Kepro knew that it was dealing with a  
20 purchaser whose agents and purchase orders consistently referred to it as “Coin Cloud,” and in this  
21 particular instance as “Coin Cloud, LLC.” **Exhibit 6**, Cashin Dec., ¶ 4; **Exhibit 7**, Durica Dec., ¶  
22 4. Cole Kepro did not contemplate the nuances of corporate structure or ponder the identity of a  
23 specific contractual privy among affiliate entities sharing the same representative agents. Simply  
24 put, when the authorized agents for an active entity called Coin Cloud LLC generate, execute, and  
25 modify a form purchase order with the specific designation “Customer – Coin Cloud, LLC,”  
26 bedrock principles of contract interpretation dictate that the customer to the transaction is Coin  
27 Cloud LLC.

28 Neither does the opposition cite a single authority for its erroneous implication that the

identity of a party having made payment would bear in any way on the identity of the party having entered into a contract, because the proposition is outright false. *See* Rsp., p. 3. As an illustrative hypothetical, consider a scenario whereby a landscaper contracts with an individual to mow her lawn, and the landscaper is ultimately paid for the service with a check issued by the individual's mother. Surely, the opposition would not suggest that this gives rise to a contractual relationship between the landscaper and the individual's mother, much less in the face of an express agreement designating the individual as the contracting party.

**IV. Even If There Had Been Any Purchase Orders Issued In The Name Of "Cash Cloud, Inc." Rather Than "Coin Cloud," Or In This Case Specifically "Coin Cloud, LLC," Each Purchase Order Constitutes Its Own Separate Contractual Transaction**

The Court will recall that in connection with 67 transactions over the course of the parties' business relationship, Cole Kepro issued sales quotes each accompanied by the same standard terms and conditions form, which the purchaser accepted every time through the issuance of a corresponding purchase order without objection. Ex. 7, ¶¶ 6-7. The opposition argued in its motion for declaratory relief, however, that because each transaction was separate and distinct from any other transaction between the parties, the standard terms and conditions should not be deemed applicable to the subject 4<sup>th</sup> Generation kiosk purchase where Cole Kepro mistakenly emailed the corresponding quote without the accompanying form. Indeed, Mr. Garon himself swore in his declaration that "each purchase is independent of every other purchase[.]" and that "the terms of each purchase are independent of the terms of any other purchase[.]" Ex. 5, ¶ 9.

Suddenly, however, when the shoe is on the other foot, the common agents for both Cash Cloud Inc. and Coin Cloud, LLC insist that the terms of the subject purchase order they generated, specifically designating "Customer – Coin Cloud, LLC," should be disregarded as "obviously an error [] that Defendant must have known[.]" Rsp. p. 5. The common agents for Cash Cloud Inc. and Coin Cloud, LLC cannot have their cake and eat it too. Rather, even if there ever had been either a quote submitted by Cole Kepro to a purchaser in the name of "Cash Cloud, Inc." (which there was none), or a purchase order submitted by a purchaser in the name of "Cash Cloud, Inc." (which there was none), it would have no bearing on the issue at hand since each transaction is



1 independent of every other transaction between the parties, and the subject purchase order generated  
 2 by the purchasing entity explicitly designates “Customer – Coin Cloud, LLC,” signed by three  
 3 authorized agents for that entity.

4 **V. The Opposition Still Offers No Explanation For A Supposed “Mistake”**  
 5 **Whereby The Common Agents For Cash Cloud Inc. And Coin Cloud, LLC**  
 6 **Issued A \$35,000,000 Purchase Order Specifically Supplemented To Designate**  
 7 **Coin Cloud LLC As The Purchaser**

8 It is beyond telling that even now, the opposition has yet to offer any explanation whatsoever  
 9 how the issuance of a \$35,000,000 purchase order supplemented to explicitly designate Coin Cloud  
 10 LLC as the purchaser could have been a “mistake.” *See Rsp., Generally.* Indeed, whereas all the  
 11 other purchase orders bear the name “Coin Cloud” at the top without further explication, it bears  
 12 underscoring that for a “mistake” to have occurred in this instance: (i) one or more common agents  
 13 of Cash Cloud Inc. and Coin Cloud LLC had to decide “mistakenly” to modify the form purchase  
 14 order to include the explicit designation, “Customer – Coin Cloud, LLC”; (ii) one or more common  
 15 agents of Cash Cloud Inc. and Coin Cloud LLC had to “mistakenly” type the designation on the  
 16 form; and (iii) each of the three authorized representatives of Coin Cloud LLC – Mr. McAlary, Mr.  
 17 Garon, and Mr. Bauer – had to “mistakenly” sign the document.

18 **VI. Cole Kepro Is Not Concerned With Res Judicata, But Rather Has A Right To**  
 19 **Sue The Actual Party With Whom It Contracted**

20 As the Court knows, before the opposition filed this action Cole Kepro initiated arbitration  
 21 against the designated “Customer – Coin Cloud, LLC” for breaching the subject purchase agreement  
 22 by way of its failure to pay for the 4<sup>th</sup> Generation kiosks. The evidence will show that common  
 23 agents of Cash Cloud Inc. and Coin Cloud LLC only concocted a story about “defective kiosks” in  
 24 response to Cole Kepro’s claim, as a pretext for the breach. Following the Court’s determination  
 25 on the opposition’s motion, “In my view there was no agreement to arbitrate the disputes over the  
 26 purchase of the 4,000 fourth generation kiosks[.]” Cole Kepro has elected to withdraw the  
 27 arbitration demand and pursue its claims against Coin Cloud LLC here in the Clark County District  
 28 Court.

1 The opposition cites caselaw for the irrelevant proposition that, “the modern function of the  
2 real party in interest rule in its negative aspect is simply to protect the defendant against a subsequent  
3 action by the party actually entitled to recover, and to insure generally that the judgment will have  
4 its proper effect as res judicata.” Rsp., p. 7 (citation omitted). To the contrary, Cole Kepro is not  
5 invoking the real party in interest rule with the purpose of securing res judicata as against Coin  
6 Cloud LLC, Cash Cloud Inc., or any other affiliate entity. Rather, Cole Kepro has invoked the rule  
7 because it is the one with the viable claim for breach of the subject purchase order, and it has a right  
8 to pursue that claim against the actual party with whom it contracted.  
9

10 **VII. Cole Kepro Has No Interest In “Forum Shopping,” And Will Gladly Bring Its**  
11 **Causes Of Action As A Counterclaim Before This Court Pursuant To NRCP**  
12 **17(a)(3) If The Pleading Is Amended To Substitute Coin Cloud LLC As The**  
13 **Proper Contracting Party**

14 Cole Kepro has no interest in “forum shopping” as alleged by the opposition. If this action  
15 had been filed in the name of the actual contracting purchaser Coin Cloud LLC, then Cole Kepro  
16 would simply have brought its causes of action as a counterclaim in connection with this proceeding  
17 rather than as a separate suit against Coin Cloud LLC. As it stands, however, Cole Kepro had no  
18 choice but to bring a separate suit.

19 The opposition notes that under NRCP 17(a)(3), “The court may not dismiss an action for  
20 failure to prosecute in the name of the real party in interest until, after an objection, a reasonable  
21 time has been allowed for the real party in interest to ratify, join, or be substituted into the action.”  
22 Rsp., p. 7. Indeed, Cole Kepro will gladly bring its causes of action as a counterclaim before this  
23 Court if the pleading is amended to substitute Coin Cloud LLC as the real party in interest.

24 ///

25 ///

26 ///



1 Wherefore, Cole Kepro respectfully requests that the Court reconsider and correct its  
2 October 10, 2022 Order to the extent it reflects that that Cash Cloud Inc. and not Coin Cloud LLC  
3 was the purchaser of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro.

4 Dated this 22<sup>nd</sup> day of November, 2022.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 By: /s/ Dan R. Waite

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17 Southfield, MI 48034

18 Tel: 248.727.1563

19 *Attorneys for Defendant, Cole Kepro*  
20 *International, LLC*

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following **“Defendant’s Reply in Support of Motion for Reconsideration of Court’s October 10, 2022 Order Solely as it Concerns the Contested Real Plaintiff Party in Interest”** to be E-Filed and served on the parties listed on the Court’s E-Filing and serving System.

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Las Vegas, Nevada 89145

*Attorneys for Plaintiff, Cash Cloud Inc.*

Dated this 22<sup>nd</sup> day of November, 2022.

/s/ Lisa M. Noltie  
An Employee of Lewis Roca Rothgerber Christie LLP



# EXHIBIT 1

# EXHIBIT 1

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DocuSign Envelope ID: F115A992-5B80-4A3A-8FB8-0E2D45C850E1



P.O. NUMBER: 04302021 - 2

**Vendor**

Cole Kepro  
4170 Distribution Circle  
North Las Vegas, NV 89030  
702-633-4270

**Customer**

Coin Cloud, LLC  
9580 W. Sahara Blvd  
Las Vegas, NV 89117  
855-264-2046

P.O. DATE	REQUISITIONER	SHIPPED VIA	Notes
04/30/2021	Jim Bauer	N/A	

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
4080	Domestic	BNR Version of Blue Box Kiosk / including updated NUC PC and \$200 discount on BNR from CPI	\$8,464.00	\$34,533,120.00
SUBTOTAL				\$34,533,120.00
Total				\$34,533,120.00

DocuSigned by:

*James M Bauer*

4/30/2021

James M Bauer VP of Operations

Date

*Jeffrey L. Garon*

4/30/2021

Jeffrey L. Garon CFO/COO

Date

DocuSigned by:

*Chris McAlary*

4/30/2021

Chris McAlary President/CEO

Date



# EXHIBIT 2

# EXHIBIT 2

---

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

COIN CLOUD LLC

**Entity Number:**

E0336612017-1

**Entity Type:**

Domestic Limited-Liability Company (86)

**Entity Status:**

Active

**Formation Date:**

07/17/2017

**NV Business ID:**

NV20171448790

**Termination Date:**

Perpetual

**Annual Report Due Date:**

7/31/2022

**Series LLC:**☐**Restricted LLC:**☐**REGISTERED AGENT INFORMATION**



**Name of Individual or Legal Entity:**

SMITH &amp; SHAPIRO, PLLC

**Status:**

Active

**CRA Agent Entity Type:****Registered Agent Type:**

Commercial Registered Agent

**NV Business ID:**

NV20151119890

**Office or Position:****Jurisdiction:**

NEVADA

**Street Address:**

3333 E. SERENE AVE., SUITE 130, Henderson, NV, 89074, USA

**Mailing Address:****Individual with Authority to Act:****Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Other/	Christopher McAlary	9580 W Sahara Ave Suite 200, Las Vegas, NV, 89117, USA	07/16/2021	Active
Other/	Christopher McAlary	9580 W Sahara Ave Suite 200, Las Vegas, NV, 89117, USA	07/16/2021	Active
Other/	Jeffrey L Garon	9580 W Sahara Ave Suite 200, Las Vegas, NV, 89117, USA	07/16/2021	Active

Title	Name	Address	Last Updated	Status
Other/	Jeffrey L Garon	9580 W Sahara Ave Suite 200, Las Vegas, NV, 89117, USA	07/16/2021	Active
Other/	Jeffrey L Garon	9580 W Sahara Ave Suite 200, Las Vegas, NV, 89117, USA	07/16/2021	Active

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# EXHIBIT 3

# EXHIBIT 3

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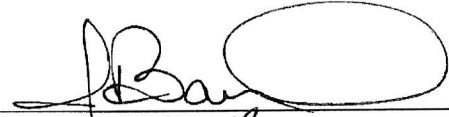
P.O. NUMBER: 2011

Cole Kepro  
 4170 Distribution Circle  
 North Las Vegas, NV 89030  
 702-633-4270

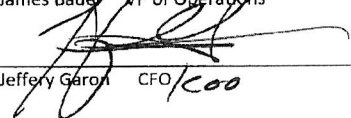
9580 West Sahara Avenue, unit 200  
 Las Vegas, NV 89117  
 Phone 855-264-2046

P.O. DATE	REQUISITIONER	SHIPPED VIA	Notes
02/25/2021	David Ellingson	n/a	

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
4080	Domestic	1500 Domestic build-type kiosk	\$8,575.00	\$34,986,000.00
SUBTOTAL				\$34,986,000.00
TOTAL				\$34,986,000.00

  
 James Bauer VP of Operations

Date

  
 Jeffery Geron CFO/COO

Date

2-26-2021

2/26/2021



# EXHIBIT 4

EXHIBIT 4

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**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

CASH CLOUD INC.

**Entity Number:**

E0169492014-9

**Entity Type:**

Domestic Corporation (78)

**Entity Status:**

Active

**Formation Date:**

04/01/2014

**NV Business ID:**

NV20141224045

**Termination Date:**

Perpetual

**Annual Report Due Date:**

4/30/2023

**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

REGISTERED AGENTS INC.

**Status:**

Active

**CRA Agent Entity Type:****Registered Agent Type:**

Commercial Registered Agent

**NV Business ID:**

NV20131735999

**Office or Position:****Jurisdiction:**

WYOMING

**Street Address:**

401 RYLAND ST STE 200-A, Reno, NV, 89502, USA

**Mailing Address:****Individual with Authority to Act:**

BILL HAVRE

**Fictitious Website or Domain Name:****OFFICER INFORMATION**☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	Christopher McAlary	10190 Covington Cross Drive, Las Vegas, NV, 89144, USA	04/22/2022	Active
Secretary	Jeffrey L. Garon	10190 Covington Cross Drive, Las Vegas, NV, 89144, USA	04/22/2022	Active
Treasurer	Jeffrey L. Garon	10190 Covington Cross Drive, Las Vegas, NV, 89144, USA	04/22/2022	Active
Director	Christopher McAlary	10190 Covington Cross Drive, Las Vegas, NV, 89144, USA	04/22/2022	Active
Director	Jeffrey L. Garon	10190 Covington Cross Drive, Las Vegas, NV, 89144, USA	04/22/2022	Active

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## CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	1,000	0.001000000000
	Common	10,000	0.0001

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Number of No Par Value Shares:

0

Total Authorized Capital:

11

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# EXHIBIT 5

# EXHIBIT 5

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**DECLARATION OF JEFFREY L. GARON**

I, Jeffrey L. Garon, pursuant to NRS 53.045, declare under penalty of perjury, the following:

1. I am the Chief Financial Officer and Co-President of Cash Cloud Inc. (“Cash Cloud”). I also serve as Treasurer, Corporate Secretary, and as a Director of Cash Cloud.

2. I have personal knowledge of the matters contained herein and am competent to testify thereto, except for those matters stated upon information and belief, and to those matters, I believe them to be true.

3. This Declaration is made in support of Cash Cloud Inc.’s Motion for Declaratory Judgment and for Stay of Arbitration Proceedings (the “Motion”).

4. Cash Cloud is a Nevada corporation based in Las Vegas specializing in the retail purchase and sale of digital currency (commonly known as cryptocurrency). Retail purchase and sale of digital currency is effectuated using kiosks (commonly known as “bitcoin ATMs”). As a result of its knowledge, effort, and tenure in the market, Cash Cloud is widely known as a leader in the retail digital currency trading industry.

5. Cash Cloud operates under the fictitious firm name “Coin Cloud,” registered with Clark County.

6. Cash Cloud also owns two federally registered trademarks using the name Coin Cloud: (1) the word mark Coin Cloud; and (2) the combination mark (i.e., logo) for Coin Cloud.

7. Coin Cloud LLC is a Nevada limited liability company who has one owner in common with Cash Cloud, Christopher McAlary, who also serves as a manager of Coin Cloud LLC. At Mr. McAlary’s request, I have assisted him in maintaining Coin Cloud LLC’s registration with the Nevada Secretary of State. Notwithstanding its status in good standing with the Nevada Secretary of State, Coin Cloud LLC does not conduct active business operations and has not done so for several years. Coin Cloud LLC had no active business operations in 2021.

1           8.       Cash Cloud has made several purchases of equipment for its business from  
2 Defendant Cole Kepro International, LLC ("Cole Kepro"). The purchases are generally  
3 reflected in purchase orders submitted to Cole Kepro using Cash Cloud's fictitious firm  
4 name, Coin Cloud. All purchases of equipment from Cole Kepro that I have been  
5 involved in have been made by Cash Cloud and payments for the same have come from  
6 Cash Cloud's bank account.

7           9.       Each purchase made by Cash Cloud with Cole Kepro is independent of  
8 every other purchase Cash Cloud has made with Cole Kepro and the terms of each  
9 purchase are independent of the terms of any other purchase between Cash Cloud and  
10 Cole Kepro.

11          10.      In February 2021, Cash Cloud agreed to purchase 4,080 4<sup>th</sup> Generation  
12 Cole Kepro kiosks ("C-2960-01-000-GEN04 -Coin Cloud Bitcoin Kiosk With BNR") from  
13 Cole Kepro for a total price of \$34,986,000.00.

14          11.      On February 16, 2021, Rick Durica of Cole Kepro sent Cash Cloud two  
15 sales quotes for the 4<sup>th</sup> Generation kiosks: one for \$8,550.00 per kiosk and one for  
16 \$8,575.00 per kiosk (the latter of which reflected an updated price for speakers and  
17 harness). Neither of these sales quotes included any terms and conditions beyond the  
18 production/delivery and payment terms reflected on each one-page sales quote. Neither  
19 of these sales quotes included any provision for the arbitration of disputes between Cash  
20 Cloud and Cole Kepro.

21          12.      Cash Cloud agreed to purchase 4,080 of the 4<sup>th</sup> Generation kiosks for the  
22 \$8,575.00 per unit price (totaling \$34,986,000.00), consistent with quote number 4275-  
23 1 (a true and accurate copy of which is attached to the Motion as Exhibit 8). On February  
24 26, 2021, I signed a signed purchase order for Cash Cloud's purchase of 4,080 4<sup>th</sup>  
25 Generation kiosks for \$34,986,000.00 (a true and accurate copy of which is attached to  
26 the Motion as Exhibit 9). Lead time for the production/delivery of the kiosks was 12  
27 weeks.  
28

1           13.     The purchase order for 4,080 4<sup>th</sup> Generation kiosks was emailed to Andrew  
2     Cashin at Cole Kepro on February 26, 2021 (a true and accurate copy of the email is  
3     attached to the Motion as Exhibit 10). In response, Mr. Cashin emailed back on  
4     February 26, 2021, stating, "Thank you very much. We've all worked very hard to get to  
5     this point. Now we have to execute at this next level. We're on it." A true and correct  
6     copy of Mr. Cashin's February 26, 2021 email is attached to the Motion as Exhibit 11.

7           14.     Approximately eight weeks later, after further discussions with Cole  
8     Kepro, Cole Kepro offered to sell the 4<sup>th</sup> Generation kiosks at a slightly lower price to  
9     Cash Cloud (\$8,464.00 per unit). Cole Kepro's offer to sell the 4<sup>th</sup> Generation kiosks at  
10    the slightly lower price did not include any provision for arbitration of disputes between  
11    Cash Cloud and Cole Kepro. On April 30, 2021, I executed a purchase order for the 4,080  
12    4<sup>th</sup> Generation kiosks for a total price of \$34,533,120.00 (a true and accurate copy of the  
13    email is attached to the Motion as Exhibit 12).

14          15.     While this purchase order was on Cash Cloud's letterhead including the  
15    registered trademarked Coin Cloud logo, the purchase order mistakenly said that the  
16    purchaser was Coin Cloud LLC, not Cash Cloud. Notwithstanding this error, Coin  
17    Cloud LLC did not purchase the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro. Coin  
18    Cloud LLC did not take delivery of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro.  
19    Coin Cloud LLC did not make payments for the 4,080 4<sup>th</sup> Generation kiosks from Cole  
20    Kepro. Cash Cloud purchased the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro. Cash  
21    Cloud took delivery of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro. Cash Cloud  
22    made payments from its bank account for the 4,080 4<sup>th</sup> Generation kiosks from Cole  
23    Kepro.

24          16.     Cash Cloud, not Coin Cloud LLC, possesses the rights and remedies  
25    available to the purchaser of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro.

26          17.     Cash Cloud's purchase of the 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro  
27    did not include any agreement to arbitrate disputes between Cash Cloud and Cole  
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1 Kepro. Cash Cloud has not agreed and does not agree to arbitrate its dispute with Cole  
2 Kepro concerning the purchase of 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro.

3 18. Later in 2021, Cash Cloud discussed a potential purchase of a new line of  
4 kiosks called “Spanners” from Cole Kepro.

5 19. On August 17, 2021, Rick Durica emailed me (and others) a proposal for  
6 the purchase of 10,000 Spanner kiosks. This proposal did not include any provision for  
7 arbitration and did not include the two-page set of terms and conditions attached to  
8 Andrew Cashin’s November 1, 2021 email to me.

9 20. On August 26, 2021, I signed a purchase order for Cash Cloud’s purchase  
10 of 10,000 Spanner kiosks for \$10,000 per unit (a true and accurate copy of which is  
11 attached to the Motion as Exhibit 14). Like the February 26, 2021 purchase order, the  
12 August 26, 2021 purchase order was made on Cash Cloud’s letterhead including the Coin  
13 Cloud logo.

14 21. On November 1, 2021, Andrew Cashin of Cole Kepro emailed me  
15 requesting that I “confirm the following purchase order for \$100,000,000.00.” Included  
16 in this email was an attachment of the two-page .pdf of terms and conditions, which Mr.  
17 Cashin acknowledged was not included in the sales quote for the Spanners, but that  
18 Cole Kepro wished to be part of the purchase of the Spanners. In response to this email,  
19 I confirmed the purchase order.

20 22. At no point in time did Cash Cloud agree that all of Cash Cloud’s purchases  
21 of Cole Kepro’s products would be subject to the terms and conditions attached to Mr.  
22 Cashin’s November 1, 2021 email.

23 23. At no point in time did Cash Cloud agree that its purchase of 4,080 4<sup>th</sup>  
24 Generation kiosks would be subject to the terms and conditions attached to Mr. Cashin’s  
25 November 1, 2021 email.

26 24. Indeed, I certainly could not and did not agree that the two-page .pdf of  
27 terms and conditions had, in the past, been included in all sales quotes because Cole  
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1 Kepro had not included the two-page .pdf of terms and conditions in all prior sales quotes  
2 to Cash Cloud.

3 25. A dispute has arisen between Cash Cloud and Cole Kepro concerning the  
4 purchase of 4,080 4<sup>th</sup> Generation kiosks. Cole Kepro issued a demand for arbitration  
5 dated May 27, 2022 concerning multiple purchase orders, including Cash Cloud's  
6 purchase of 4,080 4<sup>th</sup> Generation kiosks from Cole Kepro (a true and accurate copy of  
7 which is attached to the Motion as Exhibit 15).

8 26. Because Cash Cloud has never agreed to arbitrate any dispute concerning  
9 its purchase of 4,080 4<sup>th</sup> Generation kiosks with Cole Kepro, Cash Cloud is pursuing its  
10 remedies before this Court. However, because the arbitration organization selected by  
11 Cole Kepro (AAA) has stated that it will move forward with arbitration absent a court  
12 order, an order declaring that there is no arbitration agreement between Cash Cloud  
13 and Cole Kepro concerning the purchase of 4,080 4<sup>th</sup> Generation kiosks and staying the  
14 arbitration concerning the purchase of 4,080 4<sup>th</sup> Generation kiosks is needed.

15 I declare that the foregoing is true and correct under penalty of perjury under the  
16 laws of the State of Nevada.

17 Executed this 23rd day of June, 2022.

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20 JEFFREY L. GARON  
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# EXHIBIT 6

# EXHIBIT 6

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3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169

LEWIS ROCA

DECLARATION OF ANDREW CASHIN

I, Andrew Cashin, pursuant to NRS 53.045, declare the following:

1. I am the President and CFO of Cole Kepro International, LLC ("CKI").

2. I make this declaration based on personal knowledge, and if called to testify as a witness in this matter I would testify competently and consistently with the representations contained herein.

3. This declaration is made in support of CKI's Response in Opposition to Plaintiff's Motion for Declaratory Judgment and for Stay of Arbitration Proceedings, in addition to CKI's Countermotion to Dismiss Case No. A-22-854226-C.

4. CKI has maintained a multi-year business relationship with an entity whose purchase orders consistently designate it as "Coin Cloud," having its address at 9580 W. Sahara Blvd., Las Vegas, NV 89117.

5. The allegation predicated the plaintiff's Complaint in Case No. A-22-854226-C is false, specifically that "[t]he 4,080 digital currency kiosks purchased suffer from a screen defect which interferes with the normal operation of the kiosk, including the use of the kiosk to purchase and/or sell digital currency." (Compl., ¶ 29).

6. Both CKI and Coin Cloud test every product before it leaves CKI's facility.

7. In early 2022, Coin Cloud's CFO/COO Jeffrey Garon began asking me for concessions because Coin Cloud was falling behind on its payments owed to CKI for the 4<sup>th</sup> Generation kiosks.

I declare that the foregoing is true and correct under penalty of perjury per the laws of the State of Nevada.

Executed this 13 day of July, 2022.



Andrew Cashin



# EXHIBIT 7

# EXHIBIT 7

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DECLARATION OF RICK DURICA

I, Rick Durica, pursuant to NRS 53.045, declare the following:

1. I am the Vice President of Sales of Cole Kepro International, LLC ("CKI").

2. I make this declaration based on personal knowledge, and if called to testify as a witness in this matter I would testify competently and consistently with the representations contained herein.

3. This declaration is made in support of CKI's Response in Opposition to Plaintiff's Motion for Declaratory Judgment and for Stay of Arbitration Proceedings, in addition to CKI's Countermotion to Dismiss Case No. A-22-854226-C.

4. CKI has maintained a multi-year business relationship with an entity whose purchase orders consistently designate it as "Coin Cloud," having its address at 9580 W. Sahara Blvd., Las Vegas, NV 89117.

5. CKI and Coin Cloud engaged in over 80 transactions between December 2019 and April 2022, whereby CKI would issue a sales quote and Coin Cloud would accept by issuing a corresponding purchase order.

6. 67 of CKI's aforementioned sales quotes issued to Coin Cloud throughout the parties' multi-year course of dealing were accompanied by CKI's applicable standard two-page terms and conditions form, identical in each instance.

7. Never once during the parties' multi-year business relationship did Coin Cloud raise any objection to the standard terms on the form.

8. Coin Cloud received and accepted 12 CKI quotes accompanied by the same standard terms and conditions form before the quote at issue in the subject motion and countermotion was sent on February 16, 2021. Coin Cloud issued the corresponding purchase order on April 30, 2021, to buy 4,080 4<sup>th</sup> Generation kiosks from CKI for \$34,533,120.00.

9. The quote at issue is among a handful of those I mistakenly emailed to Coin Cloud during the parties' multi-year business relationship without the accompanying standard terms and conditions form that Coin Cloud received and accepted in connection with 67 other transactions.

1 I declare that the foregoing is true and correct under penalty of perjury per the laws of the  
2 State of Nevada.

3  
4 Executed this 18 day of July, 2022.



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7 Rick Durica  
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3993 Howard Hughes Parkway, Suite 600  
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**LEWIS ROCA**